

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
ENTERED

NOV 21 2005

James H. Smith, Clerk of Court

Edward Paredes,

Plaintiff,

VS.

Jo Anne B. Barnhart,  
Commissioner of the Social Security  
Administration,

Defendant.

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CIVIL ACTION NO. H-04-4705

**MEMORANDUM AND ORDER**

On September 30, 2005, this Court granted summary judgment in favor of Defendant, denying Plaintiff's request for reversal of Defendant Jo Anne B. Barnhart's ("the Commissioner") final decision to deny Plaintiff disability benefits under Title XVI of the Social Security Act, *id.* §§ 401 *et seq.* (See Docket Nos. 31, 34.) Plaintiff now moves, pursuant to FED. R. CIV. P. 59(a)(2), for a new trial. After considering the motion, Docket No. 33, the Court finds that it should be and hereby is **DENIED**.

Plaintiff argues that the Court erred in finding that Plaintiff failed to provide the Administrative Law Judge (ALJ) with evidence that Plaintiff suffered from obesity. Plaintiff contends that his recitation, in his administrative filings, of his height and weight put the ALJ on notice that Plaintiff was claiming obesity as a disability. As support for his motion, Plaintiff has attached, as Exhibit A, a copy of Social Security Policy Interpretation Ruling 02-1p, which, *inter alia*, describes the effects of obesity and explains how it is diagnosed.

In its Order granting summary judgment in this case, the Court pointed out that the burden rests on a disability claimant to show evidence of each claimed disability.

(See Docket No. 33 at 4-5 (citing 20 C.F.R. § 404.1512 (2005)).) Had Plaintiff introduced evidence such as Exhibit A to the instant motion during the administrative proceeding, the Court might be able to reach a different conclusion in this case. As stated in the Court's Order granting summary judgment, however, a claimant's mere recitation of vital statistics does not constitute evidence of a disability in an administrative proceeding. Plaintiff's motion is therefore DENIED.

**IT IS SO ORDERED.**

**SIGNED** at Houston, Texas on this the 21<sup>st</sup> day of November, 2005.

  
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KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE

**TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES  
THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY  
OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH  
THEY MAY HAVE BEEN SENT ONE BY THE COURT.**